IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1525 of 2005

Mukand Staff & Officers Asso. ...Petitioner

versus

M/s Mukand Ltd .. Respondent

Mr Sanjay Singhvi with Ms Jane Cox for Petr.

Mr P.K.Rele with Mr Piyush Shah for Respt no.1

CORAM : D.G. KARNIK, J

DATED : 13th June 2005.

P.C.

1. Heard learned counsel for the parties. This petition is directed against the order dated 20th January, 2005 passed by the Industrial Tribunal, Mumbai rejecting part of the amendment to the pleadings sought by the petitioners.

2. By an order dated 17th February, 1993 passed under section 10 read with section 5 of sub-section 12 of the Industrial Disputes Act, the industrial disputes between the petitioner and the respondents were referred for adjudication at the hands of the

Industrial Tribunal, Mumbai. The adjudication made by the Industrial Tribunal and the order passed in a writ appeal by this court was finally challenged before the Supreme Court by both the parties by filing two cross appeals. By an order dated 10th May, 2004 the Hon'ble Supreme Court dismissed the appeals filed by the petitioner union and allowed the appeal filed by the respondent company inter alia holding that the issue regarding estoppel as well as the issue regarding community of interest was not pleaded by the petitioner and therefore could not be looked into by the tribunal. The Supreme Court further considered the evidence adduced and held that even on evidence the finding that there existed community of interest was erroneous. The Supreme Court held that there was gross fundamental errors including errors in assessing the financial capacity burden in the award of the tribunal and therefore remanded the matter back for fresh adjudication in the light of its judgment. On remand the application was made by the petitioners for curing the defects of absence of pleadings relating to estoppel and community of interest alongwith other amendments. While other amendments were allowed the tribunal declined the amendment in the pleadings regarding estoppel and community of interest. That

order is challenged in this petition.

3. The tribunal was bound by the order of remand and could have considered only the matters for which the dispute was remanded back to it. As the matter was not remanded for deciding issues of estoppel and community of interest the tribunal in my view, was right in rejecting the amendment regarding these two matters.

3. I am in complete agreement with the following observations of the tribunal (at para nos. 9 & 10 of the order)

> " In my opinion the proposed amendment of para 17 A pertaining to the estoppel and para 17 B pertaining to the community of interests between the workmen and so called non workmen from monthly rated staff, are not required to be considered in view of the fact that, in para 48 to 56 of the judgment of the Honble Supreme Court, particularly in para 54 of the judgment, the Hon'ble Supreme Court pleased to observe that :
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> " The findings of the Court below that there is 'Community of Interest' between the workmen and the non workmen is based on misconstruing of

evidence and disregarding of vital facts. "

Thus, the parties cannot be permitted to canvass the same point again and again otherwise there will be no end to the litigation and the subject matter of the litigation. "

4. There is therefore no merit in the petition which is hereby rejected.

D.G.KARNIK, J